

Message Text

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ACTION VOE-00

INFO OCT-01 EA-10 ISO-00 CIAE-00 FBIE-00 INSE-00 NSAE-00

(ISO) W

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P R 020726Z MAY 75

FM AMEMBASSY JAKARTA

TO SECSTATE WASHDC PRIORITY 7919

INFO AMCONSUL SURABAYA

AMCONSUL HONG KONG

UNCLAS JAKARTA 5242

HONG KONG FOR INS

E.O. 11652: N/A

TAGS: CVIS, ID

SUBJ: ADVISORY OPINION: ADOPTIONS IN INDONESIA

101(B) (1) (F) INA, 22 CFR 42.21 NOTE 4

REF: HONG KONG 4778

SURABAYA 0263

JAKARTA 5048

1. RECENTLY INS OFFICER IN CHARGE HONG KONG REQUESTED EMBASSY'S ASSISTANCE IN DETERMINING INDONESIAN LAW ON ADOPTIONS. IN THREE SPECIFIC RECENT CASES ADOPTIONS WERE PERFORMED BY INDONESIA NOTARIES RATHER THAN COURTS. ONE ADOPTION TOOK PLACE IN JAKARTA, TWO IN SURABAYA. INS OIC DID NOT RPT NOT CONSIDER SUCH ADOPTIONS AS VALID. HE APPEARS TO HAVE BASED HIS DECISION UPON HIS CONVERSATIONS WITH INDONESIAN CONSUL GENERAL HONG KONG.

2. CONSULAR OFFICERS IN BOTH CITIES SPOKE WITH NUMEROUS LAWYERS AND NOTARIES AND ALL BUT ONE AGREED THAT ADOPTIONS DRAWN UP BY NOTARIES IN INDONESIA ARE BINDING, VALID AND LEGAL. SOME LAWYERS FELT THAT ADOPTIONS SHOULD BE UNCLASSIFIED

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REGISTERED WITH THE COURT. JUDGE TENOJO, HEAD OF STATE

COURT, SURABAYA, SAID THAT A NOTARIAL ACT WAS ALL THAT WAS REQUIRED FOR A VALID ADOPTION IN INDONESIA AND THAT DUTCH LAW, WHICH DID REQUIRE COURT ACTION, WAS USED ONLY AS A GUIDELINE. HE ADDED THAT INDONESIAN LAW DOES NOT RPT NOT REQUIRE COURT ACTION FOR ADOPTIONS.

3. INS OIC HONG KONG WILLING TO ACCEPT TENOJO'S OPINION OF ATTORNEY GENERAL CONCURRED. CONSULAR OFFICER JAKARTA DISCUSSED ADOPTION WITH HEAD OF CIVIL LAW SECTION, DEPARTMENT OF JUSTICE. SHE WAS UNWILLING EVEN INFORMALLY TO GIVE AN OFFICIAL OPINION CONCERNING THE LEGALITY OF ADOPTIONS PROCESSED BY NOTARIES. SHE PROVIDED A COPY OF THE ONLY INDONESIAN LAW ON ADOPTION, A 1917 DUTCH LAW ON CHINESE ADOPTIONS. UNDER THIS LAW ADOPTIONS ARE DEFINITELY PERFORMED BY NOTARIES. THE HEAD OF THE CIVIL LAW SECTION SAID THAT THIS LAW IS USED AS A GUIDELINE BUT THAT IN HER OPINION THE LAW ITSELF WAS APPLICABLE ONLY IN CASES WHERE ALL PARTIES CONCERNED WERE INDONESIAN CITIZENS OF CHINESE HERITAGE. SHE SAID THERE IS NO RPT NO OTHER LAW IN INDONESIA ON ADOPTION, BUT ADMITTED THAT ADOPTIONS PROCESSED BY NOTARIES ARE FULLY ACCEPTED THROUGHOUT INDONESIA.

4. POWERS OF NOTARIES IN INDONESIA ARE CONSIDERABLY DIFFERENT FROM POWERS OF NOTARY PUBLICS IN U.S. HERE THEY ARE EMPOWERED TO DRAW UP AS OFFICIAL DEEDS ALL ACTS, AGREEMENTS AND ARRANGEMENTS. DOCUMENTS DRAWN UP BY NOTARIES ARE CONSIDERED BINDING BY LAW SINCE THE NOTARY HIMSELF UNDERTAKES FULL LEGAL RESPONSIBILITY FOR THE VALIDITY OF THE DOCUMENT. SO, FOR INSTANCE, A LOAN AGREEMENT DRAWN BY A NOTARY WHICH IS DEFAULTED IS IMMEDIATELY SUBJECT TO PROSECUTION, BUT IF DRAWN BY A LAWYER IT MUST GO TO COURT FIRST TO DETERMINE WHETHER THE AGREEMENT WAS LEGALLY BINDING. NOTARIES MAY REGISTER THEIR ACTS WITH COURTS OF COMPETENT JURISDICTION ALTHOUGH THEIR ACTS ARE OFFICIAL ACTS WITH OR WITHOUT REGISTRATION IN A COURT. IT SHOULD BE NOTED THAT MANY NOTARIES WILL NOT RPT NOT PERFORM ADOPTIONS IN INSTANCES WHERE TRANSFER OF CHILD CANNOT BE DOCUMENTED TO THEIR SATISFACTION.

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5. ADOPTIONS PERFORMED BY NOTARIES HAVE BEEN ACCEPTABLE TO CIVIL REGISTRY OFFICIALS FOR ISSUANCE OF AN OFFICIAL BIRTH CERTIFICATE IN A CHILD'S ADOPTED NAME, AND TO IMMIGRATION OFFICIALS FOR ISSUANCE OF INDONESIAN PASS-PORT IN THAT NAME AND EXIT PERMIT FOR TRAVEL OF CHILD TO ADOPTING PARENTS' COUNTRY. IT THEREFORE APPEARS TO CONSULAR OFFICERS IN SURABAYA AND JAKARTA THAT ADOPTIONS

PERFORMED BY NOTARIES IN INDONESIA ARE ADOPTIONS ABROAD
WITHIN THE MEANING OF 101(B)(1)(F) OF THE ACT. INS
OIC HONG KONG DISAGREES AND IS APPARENTLY REQUESTING
OPINION FROM INS WASHINGTON.

6. EMBASSY REQUESTS THE DEPARTMENT CONFER WITH INS
REGARDING THE VALIDITY OF ADOPTIONS DRAWN UP BY NOTARIES
IN INDONESIA FOR PURPOSES OF IMMIGRATION FOR IR-3 VISAS.

7. INS OIC HONG KONG'S CABLE 4778 RECEIVED AFTER THIS CABLE
DRAFTED AND TYPED. COPY HONG KONG 4778 WITH COPIES CABLES
GIVING OPINION OF
JUDGE TENOJO AND OF HEAD CIVIL LAW SECTION DEPARTMENT OF JUSTICE
WILL BE REIEATED TO DEPARTMENT.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 02 MAY 1975
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Authority: n/a
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01 JAN 1960
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975JAKART05242
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D750154-0584
From: JAKARTA
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750587/aaaadbni.tel
Line Count: 130
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION VOE
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 75 HONG KONG 4778
Review Action: RELEASED, APPROVED
Review Authority: CunninFX
Review Comment: n/a
Review Content Flags:
Review Date: 19 FEB 2004
Review Event:
Review Exemptions: n/a
Review History: WITHDRAWN <10 Jun 2003 by MorefiRH, INA>; RELEASED <19 FEB 2004 by CunninFX>; APPROVED <20 FEB 2004 by CunninFX>
Review Markings:

Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
05 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: ADVISORY OPINION: ADOPTIONS IN INDONESIA 101(B) (1) (F) INA, 22 CFR 42.21 NOTE 4
TAGS: CVIS, ID
To: STATE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 05 JUL 2006